



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BEVERLY HERTZOFF, EDWIN HERTZOFF, and :
CLAYTON HERTZOFF, :

Plaintiffs, :

vs. :

NOREEN DIAZ and UNITED ORTHOPAEDIC :
APPLIANCES, CO., :

Defendants. :
-----X

Docket No. 07-CV-3157 (CM) (MHD)

**STIPULATION AND ORDER OF
SETTLEMENT**

IT IS HEREBY STIPULATED, by and between plaintiffs Beverly Hertzoff, Edwin Hertzoff, and Clayton Hertzoff, on the one hand, and defendants Noreen Diaz and United Orthopaedic Appliances, Co. and Martin Diaz on the other hand, as follows:

1. **Payments.** Defendants will deliver to counsel for plaintiffs a total payment in the amount of \$114,163.00 (One hundred and fourteen thousand, one hundred and sixty-three dollars). Payments shall be made by a bank check or certified check payable to "Beverly Hertzoff." Payments shall be delivered so as to be received by plaintiffs' counsel at its offices, on or before the dates set forth below and in the amounts set forth below:

Payment Amount	Date Payable
\$14,163.00 (fourteen thousand, one hundred and sixty three dollars)	March 15, 2008
\$7,000.00 (seven thousand dollars)	April 15, 2008
\$7,000.00 (seven thousand dollars)	May 15, 2008
\$7,000.00 (seven thousand dollars)	June 15, 2008

\$7,000.00 (seven thousand dollars)	July 15, 2008
\$72,000.00 (seventy-two thousand dollars)	August 28, 2008

2. **Default and Attorneys Fees.** In the event that any of the foregoing payments is not timely made, after ten (10) days of written notice to counsel for defendants and a failure to cure, plaintiffs may make application to the Court for entry of judgment against defendants Noreen Diaz and United Orthopaedic Appliances, Co. and Martin Diaz, for the unpaid amount, plus the costs and the reasonable attorneys fees incurred in enforcing this Stipulation.

3. **Notices.** All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given: (i) when personally delivered; (ii) when sent by facsimile; (iii) one (1) business day after deposit with a nationally recognized overnight courier, specifying "next day delivery"; or (iv) three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested. Any notice, demand or other communication given in connection with this Stipulation and Order of Settlement shall be sent to the following addresses:

For Noreen Diaz, Martin Diaz,
and United Orthopaedic
Appliances Co. Inc.:

Orthopaedic Appliances Co. Inc.
326 2nd Ave
New York, NY 10003
Tel. (516) 357-9113
Fax (516) 357-9186

With a copy to:

Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021
Tel. (516) 393-2595
Fax (516) 466-5964

For Plaintiffs:

Beverly Hertzoff, Edwin Hertzoff, and
Clayton Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

With a copy to:

George R. Hinckley Jr.
880 Third Ave. 9th Floor
New York, New York 10022-4730
Tel. (212) 759-4933
Fax (212) 656-1531

4. **Dismissal of All Claims With Prejudice.** Upon the receipt of all payments set forth above in paragraph 1, counsel for the parties will file with the Court a Stipulation dismissing all claims and counterclaims asserted in this action, with prejudice.

5. **Mutual General Releases.** Effective upon the receipt of all payments set forth above in paragraph 1, each party to this action releases, remises, and forever discharges each other party to this action, and that parties' officers, directors, employees, shareholders, attorneys and agents, and each of their heirs executors, administrators, beneficiaries, successors and assigns, of and from any and all sums of money, claims, causes of action, demands, suits, debts, contracts or judgments of whatever kind or nature, whether known or unknown or suspected or unsuspected, that a party ever had or may now or hereafter own, hold, have or claim to have by reason of any matter, cause or thing whatsoever from the beginning of the world through the date of the execution of this Stipulation.

6. **Personal Liability of Noreen Diaz and Martin Diaz.** It is understood and agreed that Noreen Diaz and Martin Diaz are each personally liable and responsible, jointly and severally, for the payment obligations set forth herein.

7. **Facsimiles.** A signed facsimile copy of this Stipulation may be treated as an

original.

8. **Assignment:** This Stipulation and Order of Settlement may not be assigned, except with the prior written consent of the other parties to this Stipulation and Order of Settlement.

9. **No Admission of Liability, Wrongdoing, Malice or Unlawful Conduct:** This Stipulation and Order of Settlement is not and shall not be construed as an admission by any party of any liability, wrongdoing, malice or unlawful conduct of any kind.

10. **Waiver:** No waiver of any terms of this Stipulation and Order of Settlement shall constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Any party may waive any provision of this Stipulation and Order of Settlement intended for its benefit, but such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Stipulation and Order of Settlement.

11. **Entire Agreement.** This Stipulation sets forth the entire agreement and understanding of the parties relating to the subject matter herein and may be modified only upon the written consent of all parties to this Stipulation and Order of Settlement.

Dated: February 28, 2008

Approved as to Form:
TRAIGER & HINCKLEY LLP

By: George Hinckley Jr.
George R. Hinckley Jr.
880 Third Ave. 9th Floor
New York, New York 10022-4730
Tel. (212) 759-4933
Fax (212) 656-1531
Attorneys for Plaintiffs

Approved as to Form:
GARFUNKEL, WILD & TRAVIS, P.C.

By: _____
111 Great Neck Road
Great Neck, NY 11021
Tel. (516) 393-2595
Fax (516) 466-5964
Attorneys for Defendants and Martin Diaz

Accepted and Agreed:

Beverly Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

Beverly Hertzoff

Clayton Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

Clayton Hertzoff

Edwin Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

Edwin Hertzoff

Noreen Diaz
2414 Eighth St
East Meadow, NY 11554

Martin Diaz
2414 Eighth St
East Meadow, NY 11554

United Orthopaedic Appliances Co.
326 2nd Ave
New York, NY 10003

By: Noreen Diaz

SO ORDERED

Dated:

Cecilia M. Lul
U.S.D.J.

2-29-08

FEB. 26. 2008 3:06PM

Approved as to Form:
TRAIGER & HINCKLEY LLP

By: _____
George R. Hinckley Jr.
880 Third Ave. 9th Floor
New York, New York 10022-4730
Tel. (212) 759-4933
Fax (212) 656-1531
Attorneys for Plaintiffs

Approved as to Form:
GARFUNKEL, WILD & TRAVIS, P.C.

By: James M. Longella
111 Great Neck Road
Great Neck, NY 11021
Tel. (516) 393-2595
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Attorneys for Defendants and Martin Diaz

Accepted and Agreed:

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Clayton Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

Edwin Hertzoff
2 Rippling Brook Dr
Short Hills, NJ 07078-1327

Noreen Diaz
2414 Eighth St
East Meadow, NY 11554

Noreen Diaz

SO ORDERED

Dated: _____

U.S.D.J.

Martin Diaz
2414 Eighth St
East Meadow, NY 11554

Martin Diaz

United Orthopedic Appliances Co.
326 2nd Ave
New York, NY 10003

Noreen Diaz
By: Noreen Diaz